



August 23, 2005

SUMMARY OF INITIATIVE 330 TO THE LEGISLATURE
Concerns claims for personal injury or death arising from healthcare services

*This information has been prepared in response to specific questions about the provisions and effects of Initiative 330 and is provided for legislative purposes only; it is **not** provided as an expression for or against the ballot measure. Please remember that it is inappropriate to use public resources to support or oppose a ballot measure. Please refer to pages 22-25 of the 2004-05 Legislative Ethics Manual or contact Senate Counsel for further guidance on when and how comment on ballot measures is appropriate.*

BRIEF SUMMARY

Initiative 330 (I-330) alters health care liability laws by limiting the recovery of noneconomic damages to \$350,000 for medical malpractice suits against health care professionals. The amount of attorney fees to be recovered in medical malpractice cases is limited, and the allowable time frame during which such cases may be filed is shortened. The initiative also limits a party's liability in a medical malpractice claim to the percentage of the total award for which the party is determined to be responsible and authorizes periodic payments of future noneconomic damages.

BACKGROUND

Currently, juries in Washington can award both economic damages and noneconomic damages to plaintiffs in medical malpractice actions. Noneconomic damages are subjective losses such as pain and suffering, while economic damages are objectively verifiable monetary losses such as medical expenses and loss of earnings. Washington law does not currently limit the amount of damages that may be awarded in personal injury actions, including medical malpractice cases. In 1986, the Legislature enacted a cap on noneconomic damages that could be awarded in cases of personal injury or death. This cap, which was based on a formula, was subsequently ruled unconstitutional by the Washington State Supreme Court because it was found to violate the right to a jury trial provided for in the Washington constitution. See *Sofie v. Fiberboard*, 112 Wn.2d 636 (1989).

Under Washington law, attorneys' fees in legal actions for injuries resulting from the provision of health care are usually fixed, contingent or set by the court. The court is authorized to determine the reasonableness of the attorneys' fees, taking into consideration certain factors such as the time and labor required in the case and the customary fee for such services.

The time period during which a medical malpractice action may be brought is limited by the statute of limitations. The statute of limitations allows a claim to be brought during a specific

time period after an injury occurs but after which any claim is barred. Currently, Washington's statute of limitations requires that an action for medical malpractice be brought within three years of the act or omission alleged to have caused the injury, or one year after the injury was discovered or reasonably should have been discovered, whichever period is longer. The time for bringing an action is stopped if there is proof of fraud, intentional concealment, or the presence of a foreign body not intended to have a therapeutic purpose. In such circumstances, an action must be brought within one year of actual knowledge of the injury, even if the knowledge occurs more than three years after the act or omission causing the injury.

Washington law permits any party to present evidence, in a medical malpractice action, that the patient has been compensated for the injury from other sources, except for the patient's assets or insurance. Thus, Washington has partially abolished the collateral source rule, which prohibits defendants from introducing at trial any evidence that the plaintiff has been reimbursed from another source (usually insurance) for his or her damages.

Each defendant in a medical malpractice case is liable for the plaintiff's total damages, regardless of that defendant's proportion of fault for the damage done. This type of liability is referred to as "joint and several liability."

Under Washington law, parties may contract to submit lawsuits to arbitration. Washington law also authorizes periodic payments of future economic damages when awards exceed \$100,000. When periodic payments are authorized, an award is paid over a period of time in installments rather than in a single lump-sum payment.

SUMMARY OF INITIATIVE 330

Limit on Damages. I-330 places a \$350,000 limit or cap on noneconomic damages for injuries occurring as a result of a wrongful act or omission by a health care professional. This cap, which applies to injuries resulting only from actions of a health care professional, applies regardless of the number of health care professionals, providers, or institutions involved. Additionally, a limit of \$350,000 per institution and a limit of \$700,000 on the total combined civil liability are placed on noneconomic damages for injuries caused by a wrongful act or omission by persons for whom the institution is liable but who are not health care professionals. Under I-330, a person bringing a medical malpractice claim is only allowed to recover noneconomic damages once, and cannot bring multiple actions based on one injury. The initiative provides that if the limitation on damages is ruled unconstitutional, it will take effect only after a state constitutional amendment or a federal law is passed empowering the Legislature to place limits on noneconomic damages in civil actions.

Attorney Fees. Contingent attorney fees cannot exceed 40 percent of the first \$50,000 recovered, 33 1/3 percent of the next \$50,000 recovered, 25 percent of the next \$500,000 recovered, and 15 percent of any recovery exceeding \$600,000.

Time Limits on Actions. No medical malpractice action may be commenced unless the defendant has been given at least 90 days' written notice, and the action must initially be placed in mediation.

The statute of limitations during which a medical malpractice action may be brought is shortened to within three years of the act or omission alleged to have caused the injury, or one year from

the time the patient discovered or reasonably should have discovered the injury, whichever occurs first. Generally, an action may not be commenced more than three years after the act or omission has occurred. However, if there is proof of fraud, intentional concealment, or the presence of a foreign body not intended to have a therapeutic purpose, a claim must be filed within one year from the time it was discovered by the patient. Filings of any claims which would have been allowed under previous law are still allowed if the claim is brought within one year of the effective date of the proposed law. Lawsuits must be filed by a parent or guardian on behalf of children under six years of age within three years of the injury or before their eighth birthday, whichever is later. Lawsuits filed on behalf of children six years or older are subject to the standard statute of limitations.

Collateral Source Rule. I-330 fully abolishes the collateral source rule, which prohibited defendants from introducing at trial any evidence that the plaintiff has been reimbursed for his or her damages (usually by insurance). Under I-330, any party may present evidence of compensation from another source, including insurance. If the evidence from that source is admitted, then the other party may present evidence of any amount paid to secure the right of compensation.

Arbitration. I-330 permits arbitration clauses in contracts for medical service. The arbitration provision must be the first article of the contract and must also appear in bold red type immediately before the signature line.

Liability provisions. Each party found to be liable in a medical malpractice claim will only be responsible for the percentage for which that party is at fault. I-330 eliminates “joint and several” liability in medical malpractice cases, except when multiple parties act in concert or if an agency or supervisory relationship existed at the time the injury occurred.

A hospital is liable for an act or omission of a health care provider only if the provider is an actual agent or employee of the hospital and was acting within the course and scope of his or her position. Similarly, an individual health care provider is not liable for negligent or wrongful acts of others unless they were acting under the provider’s direct control or supervision.

Periodic Payments for Future Damages. Under I-330, a court’s authority to award periodic payments of future damages is expanded to include noneconomic damages. The amount of the award necessary for periodic payments to be ordered is lowered from \$100,000 to \$50,000. If the claimant dies before the total judgment is paid, the court must, upon request, modify the judgment to eliminate payments of future damages such as medical treatment and pain and suffering, but cannot eliminate payments for loss of future earnings.

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